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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,947	08/03/2001	Michel Andre Crepeau	PM 01038 (5500*86)	8375

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EXAMINER

MITCHELL, GREGORY W

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/921,947		CREPEAU, MICHEL ANDRE	
	Examiner		Art Unit	
	Gregory W. Mitchell		1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-113 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-113 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Remarks filed August 03, 2005. Claims 58-113 are pending and are examined herein.

35 USC § 103 Rejections Maintained

Claims 58-113 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk (USPN 4966779) in view of all of Parfitt (*Martindale*, 32nd ed., pp. 1358-1359, 1366-1370), Winstrom et al. (USPN 3708583) and Pomp (USPN 5935918) for the reasons set forth in the Office Action dated May 04, 2005.

As an initial matter, it is pointed out that by the phrase "each of", Examiner intended "all of". The standing set forth above has changed "each of" to "all of" for clarification purposes.

Applicant argues, "the Kirk patent contains no teaching which would lead one of ordinary skill in the art to believe that an alkyl lactate could be safely added to the emulsions of the Kirk patent while still maintaining the desired properties and characteristics of the Kirk emulsion" because, for example, "in the abstract of the Kirk patent it is stated that the emulsions contain 'specific proportions' of the listed ingredients." This argument is not persuasive because there would be no need to actually alter the "specific proportions" of the Kirk emulsion by adding an alkyl lactate. It is noted that Kirk teaches that preservatives, for example, may be *optionally* added to the composition. See col. 4, lines 23-27. Therefore, Kirk envisions that other

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components may, optionally, be added to the composition comprising "specific proportions" without adverse effect.

Applicant further argues, "there is no teaching in the Kirk patent that would motivate an artisan of ordinary skill to modify the composition of the emulsion described therein and, even if an artisan somehow found the requisite motivation to modify the composition of the emulsion, that artisan would not have an expectation of success because the Kirk patent teaches that even minor modifications to the composition of the emulsion leads to a loss of their desired properties and the exhibition of certain undesirable characteristics." This argument is not persuasive because the essential elements to the Kirk composition are found to be in the same or overlapping concentrations as those instantly claimed. Furthermore, as stated above, Kirk envisions optional components being added to the composition so long as they do not alter the composition make-up of the essential components. It is only when these essential components are varied outside the cited concentrations that the undesirable characteristics are observed by Kirk. See col. 6, lines 43-53; Table 1.

Applicant argues, "The Examiner apparently realized that the Kirk patent does not contain any teachings that would motivate one of ordinary skill to add an alkyl lactate to the emulsion described therein" and that "there is no teaching in the Winstrom et al. patent about the identity or the amount of the flavoring agent that would be acceptable." These arguments are not persuasive because Kirk and Winstrom et al. are both directed to nutritional additives to food products. Winstrom et al. teach that the addition of flavoring agents to such additives provides aesthetic benefit. Accordingly,

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one of skill in the art would have expected that the addition of a flavoring agent to additives of Kirk would have also provided an aesthetic benefit. Examiner has relied on Pomp, which teaches that butyl lactate is known to be an FDA flavor additive.

Accordingly, one would have been motivated to add butyl lactate to the composition of Kirk. This motivation, coupled with the fact that Kirk teaches that optional agents are envisioned within the composition taught therein, would lead one to an expectation of success in preparing an aesthetically appealing nutritional additive when adding the butyl lactate to the composition of Kirk.

Applicant argues, "the Pomp patent does not contain any disclosure that butyl lactate would be suitable for use in vitamin compositions." This argument is not persuasive because the teaching of Winstrom et al. does not limit the types of flavor agents that can be added to vitamin additives. Accordingly, it would have been obvious to one of ordinary skill in the art to add any known flavor agent.

Applicant further argues against Pomp stating, "the Examiner makes no mention of the fact that the Pomp patent is directed to the use of butyl lactate (and/or amyl lactate) as a solvent for detaching fouling residue from the bore of a firearm." This argument is not persuasive because Examiner has relied only on Pomp to show uses butyl lactate is known in the art to have. Accordingly, Examiner has relied on the teaching that butyl lactate is known in the art to be a flavoring agent. Applicant argues that there would have been no motivation to combine Pomp with Kirk because Pomp is not directed to an analogous art. This argument is not persuasive because the teaching

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of Pomp that butyl lactate is known to be a flavoring agent is certainly of an analogous and pertinent art.

Applicant argues that none of the references teach the claimed concentration of butyl lactate to be used in the composition. As set forth in the Office Action dated May 04, 2005, it is Examiner's position that it would have been obvious to utilize the butyl lactate in the composition claimed because "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Applicant's arguments that Kirk teaches away from the use of a flavoring agent is not persuasive because Winstrom et al. teaches that the addition of flavoring agents to vitamin additives is actually beneficial. Therefore, when considering Kirk in view of Winstrom et al., the skilled artisan would understand that if aesthetically desirable properties such as flavoring were desired, flavoring agents could be added to the composition of Kirk.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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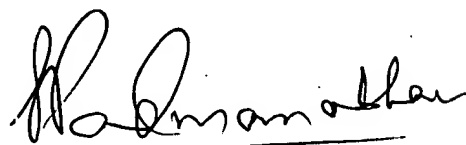
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W Mitchell whose telephone number is 571-272-2907. The examiner can normally be reached on M-F, 8:30 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gwm



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER